

## **TITLE PAGE**

**AGREEMENT NAME:**     **Maersk/HL Central America Vessel Sharing Agreement**

**FMC NUMBER:**           **203-011463-014 (9th Edition)**

**CURRENT  
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**ARTICLE 1. NAME**

This Agreement shall be known as the "Maersk/HL Central America Vessel Sharing Agreement" (the "Agreement").

**ARTICLE 2. PURPOSE**

The purpose of this Agreement is to enable the Parties to provide efficient competitive ocean common carrier services with greater cost effectiveness and operational efficiency in the trade covered herein.

**ARTICLE 3. PARTIES**

The Parties hereto are:

Maersk Line A/S ("Maersk")  
50, Esplanaden  
DK-1098 Copenhagen K, Denmark

HAPAG-LLOYD AG ("HL")  
Ballindam 25  
20095 Hamburg, Germany

**ARTICLE 4. GEOGRAPHIC SCOPE**

This Agreement shall cover the carriage of cargoes between ports on the United States East Coast (Eastport, Maine to Key West, Florida range), on the one hand, and ports in Colombia and Panama on the other hand (hereinafter the "Trade").

**ARTICLE 5. AGREEMENT AUTHORITY**

5.1 (a) The Parties may consult and agree upon the deployment and utilization of vessels operated in this Agreement in the Trade including, without limitation, sailing schedules, service frequency, ports to be served, port rotation, type and size of vessels to be utilized, the phase-in/phase-out of vessels and the terms and conditions thereof. The Parties may consult and agree upon the number, type and capacity only of those vessels to be operated for the purpose of this Agreement by each of them. A vessel provided by a Party under this Agreement may be chartered from another Agreement party on such terms and conditions as the involved parties may agree. Each Party will bear all costs for the vessel(s) it provides, including but not limited to daily running costs, time charter hire, bunkers, port charges, canal dues, dry docking and insurance. This Agreement is non-exclusive, and each party may operate or charter space on other vessels in the Trade outside of this Agreement.

(b) The maximum number of line-haul vessels to be operated hereunder is up to eight (8), each vessel having a nominal capacity between 2,500 TEU and 5,000 TEU. Initially, the Parties shall operate three (3) vessels hereunder, each with a nominal capacity of approximately 4,000 TEUs and an agreed operational capacity of 3,260 TEUs/35,860 Mtons. Maersk shall provide two (2) vessels and HLAG shall provide one (1) vessel. Each Party shall be entitled to utilize space on each vessel operated under the Agreement, northbound and southbound, in accordance with the percentage determined by dividing the number of TEU slots provided by each Party in its participating vessels by the total number of slots provided by all Parties, multiplied by each vessel's declared capacity. The Parties may charter slots from within their respective allocations to/from one another on an ad hoc basis on such terms and conditions as they may agree from time to time.

(c) As used herein, the Party whose vessel capacity is chartered by another Party shall be referred to as "Vessel Provider" and the Party who from time to time charters vessel capacity from another Party shall be referred to as "Slot User". The Vessel Provider guarantees the availability of space to the Slot User at all times during each voyage, save where a reduction in the slots and/or reefer plugs available on a vessel has been caused by a force majeure event, in which case the Parties shall share the slots and reefer plugs which are available on the relevant vessel in proportion to their respective slot allocations.

If the Vessel Provider fails to provide slots or load containers of the Slot User, it shall:

- i. make available to the Slot User, from its own slot allocation on the next vessel in the service, an equivalent number of Slots and/or reefer plugs to those which were not made available to the Slot User or, if the Vessel Provider in its sole discretion so decides,



- ii. pay the Slot User a sum equal to the slot cost multiplied by the number of such unavailable slots or, alternatively, provide the Slot User with a combination of such monetary and space compensation.

Provided, however that when containers are not loaded, the Slot User shall not receive compensation for slots it has been able to use for other cargo/containers before the vessel departs the relevant region.

(d) Where the Vessel Provider demonstrates to the reasonable satisfaction of the Slot User that the omission of a port is required for any of the following reasons, the Vessel Provider shall have the right to discharge and unload the cargo and containers on board the relevant vessel at the nearest port of convenience which, so far as reasonably practicable, shall be a scheduled port on the service (or such other port as is specified in a rescheduling plan), and each Party shall be responsible for all operational costs incurred in respect of its containers and cargo on board the affected vessel and at the omitted port: (i) berth congestion at the omitted port which is reasonably anticipated to incur a delay of 48 hours or more; (ii) closure of the port or lack of ability to operate the vessel in the port due to bad weather, strikes of service providers (such as pilots, tugs and stevedores) or the lack of terminal equipment due to breakdown or delay which is reasonably anticipated to incur a delay of 48 hours or more; or (iii) a lawful deviation made for the purpose of saving or attempting to save life or property at sea or a force majeure event (excluding the events in (i) and (ii) above). The Vessel Provider shall promptly notify the Slot User of any of the above events and consult with the Slot User as to appropriate measures to be taken to minimise costs. Unless the port omission is excused as above, the Vessel Provider shall be responsible for the movement of cargo and containers to and from the omitted port as follows: (i) by arranging for the transshipment, feeding and on-carriage, which (at the option of the Vessel Provider) may be by means of the next vessel in the service, of all the Slot User's containers loaded on board the affected vessel and destined for the omitted port before the port omission was made; and (ii) by compensating the Slot User for the slots it would have used at the omitted port and, for this purpose, the Vessel Provider shall: make available to the Slot User, from its own slot allocation on the next vessel in the service, such number of slots and reefer plugs which is equivalent to the average of the Slot User's last three liftings from that port; or, if the Vessel Provider in its sole discretion so decides, pay the Slot User a sum equal to the slot cost multiplied by the number of such slots or, alternatively, provide the Slot User with a combination of such monetary and space compensation, except that the Slot User shall not receive compensation for slots and reefer plugs which it is deemed the Slot User would have filled at the omitted port to the extent that it has been able to utilise these slots for other cargo and containers before the vessel's departure from the region.

(e) An ad hoc addition of a port of call may be made at the discretion of the Vessel Provider, provided always that such call has no effect on the schedule integrity of vessels in the service,

including their normal transit times. In the event of an ad hoc addition of a port of call the Vessel Provider shall, from the point in time that the relevant vessel leaves the scheduled port of call immediately prior to the ad hoc port call until such time as the vessel is back on schedule as if that additional call had not taken place:

- i. bear all risk in relation to such deviation;
- ii. not have the benefit of any limitations or exceptions to liability set out in this Agreement;
- iii. be responsible for all costs which would not otherwise have been incurred; and
- iv. have exclusive rights of discharge/load at the additional port of call.

The Slot User may load and/or discharge cargo and containers at an additional port of call with the prior consent of the Vessel Provider, provided that the Slot User waives any right of action against the Vessel Provider under this Article 5.1(e) and the Slot User shares with the Vessel Provider all additional costs which are incurred in connection with such port call (including, without limitation, the port and fuel costs) in proportion to their respective number of moves. For these purposes, the cost of the extra fuel shall be calculated by reference to the then current bunker price as determined by the Parties and the other costs shall be calculated by reference to publicly available market rates or, where there is no publicly available market rate for the cost in question, the Parties' reasonable determination of the then current market rate. No information that is commercially sensitive shall be disclosed.

5.2 The Parties may use space chartered under this Agreement regardless of the origin or destination of the cargo, including transshipment of cargo to or from an origin or destination which is within or outside the scope of this Agreement, whether under a through bill of lading or otherwise.

5.3 (a) Payment and terms and conditions for usage of the vessels operated under this Agreement shall be as the Parties may from time to time agree.

(b) Save as otherwise provided in this Agreement, a Party may not sub-charter slots and/or reefer plugs to any third party without the prior written consent of all Parties. Any such third party must be a vessel operating carrier. A Party may always sub-charter slots and/or reefer plugs to its vessel operating affiliates (as may change from time to time). Where a Party sub-charters slots and/or reefer plugs to an affiliate, that Party: shall not permit the relevant affiliate to sub-charter such slots or reefer plugs to any other person without the prior written consent of all Parties; and shall terminate the sub-chartering arrangement immediately upon the sub-chartering party ceasing to be an affiliate. For the avoidance of doubt, the sub-chartering



Party shall remain fully responsible and liable under the terms of this Agreement for any breach of its obligations in this Agreement regardless of whether such breach is committed by its affiliate or any third party sub-chartering its slots and/or reefer plugs, but any such breach will not constitute a material breach of this Agreement where the sub-chartering Party has not acted recklessly in agreeing to sub-charter its slots and/or reefer plugs to the relevant affiliate or third party. All sub-chartering entities shall be duly identified with their proper container operator codes on all loading lists and bay plans of all vessels in all ports. Upon the termination of an arrangement for the sub-chartering of slots by a Party to a third party (other than its affiliates), that Party shall offer the relevant slots to the other Party, save to the extent that they are required for its own use.

5.4 In connection with their service in the Trade, the Parties may consult and agree on the terminals to be called at each port, but shall negotiate and contract separately with terminal operators and other third parties. The Parties are authorized to discuss and agree on their respective responsibilities for charges incurred with respect to common terminal-related charges and costs, such as shifting and lashing of containers. Nothing contained herein shall authorize the Parties jointly to operate a marine terminal in the United States unless expressly agreed.

5.5 A Party intending to enter into any regular and/or permanent slot charter or slot exchange agreement (whether purchasing or selling slots), rationalization, or other cooperative container shipping arrangement, on any new services to be established, with any other carrier in the trade route between East Coast of the United States and Central America, shall first offer such opportunity to the other Party.

5.6 The Parties may also discuss and agree upon administrative matters and related issues, including, but not limited to, performance procedures and penalties, procedures for allocating space, forecasting, terminal operations, stowage planning, schedule adjustments, record keeping, responsibility for loss or damage, the interchange of information and data, including EDP communications, regarding all matter within the scope of the Agreement, terms and conditions for force majeure relief, insurance, indemnification, consequences for delays, general average, salvage, stowaways, and treatment of hazardous and dangerous cargoes.

5.7 Each Party shall retain its separate identity, shall have separate sales, pricing and marketing functions, and will issue its own bills of lading, handle its own claims, and shall be fully responsible for the expenses and operation of its owned or chartered vessels and for terminal costs attributable to cargo moved on its own bill of lading. No Party shall be deemed to be the agent for any other Party for any purpose under this Agreement. This Agreement is not and shall not be construed as a joint venture, partnership or unincorporated association and no

Party is or shall be construed as, deemed to be or found liable for the debts or obligations of any other Party(ies).

5.8 The authority of the Parties under this Agreement contemplates operations, activities and agreements interstitial to or otherwise in implementation of all such expressed authority or undertaken or entered into with a reasonable basis to conclude that such collective action is covered by this Agreement, as lawfully in effect at the time the action occurred. In accordance with 46 C.F.R. § 535.408, any further agreement contemplated herein cannot go into effect unless filed and effective under the Shipping Act of 1984, except to the extent that such agreement concerns routine operational or administrative matters. Except as required by law, the terms and conditions of any interstitial agreement shall be confidential to the Parties and no details of such agreement or the contents thereof shall be divulged to any third party without the prior written approval of the others.

## **ARTICLE 6. ADMINISTRATION AND DELEGATION OF AUTHORITY**

6.1 This Agreement shall be administered and implemented by meetings, decisions, memoranda, and communications between the Parties to enable them to effectuate the purposes of this Agreement.

6.2 The following individuals shall have the authority to file this Agreement and any modifications thereto with the Federal Maritime Commission, as well as the authority to delegate same:

- (a) Any authorized officer or representative of a Party; and
- (b) Legal counsel for each of the Parties.

## **ARTICLE 7. MEMBERSHIP**

7.1 New Parties to this Agreement may be added only upon unanimous consent. The addition of any new Party to this Agreement shall become effective after an amendment noticing its admission has been filed with the Federal Maritime Commission and become effective under the Shipping Act of 1984.



**ARTICLE 8.**

**VOTING**

Actions taken pursuant to, or any amendment of, this Agreement shall be by unanimous consent of the Parties.

**ARTICLE 9.     DURATION AND TERMINATION OF AGREEMENT**

9.1     This Agreement as revised by Amendment No. 14 shall be effective as of the later of its effective date under the Shipping Act of 1984, as amended and codified, and June 14, 2019, or such later date as the parties may agree (the "Commencement Date").

9.2     This Agreement shall continue in effect unless the Agreement is terminated pursuant to Article 9.3.

9.3     This Agreement may be terminated or suspended in accordance with the following provisions:

- (a)     Upon the mutual agreement of the Parties.
- (b)     Upon not less than six (6) months' notice, such notice not to be served prior to 12 months after the Commencement Date.
- (c)     If, following the outbreak of war (whether declared or not) or hostilities or the imminence thereof, or riot, civil commotion, revolution or widespread terrorist activity, any Party, being of the opinion that the events will render the performance of the Agreement hazardous or wholly or substantially imperilled, can give one month prior notice to terminate the Agreement.
- (d)     If at any time any Party is dissolved or becomes insolvent, or unable to pay its debts as they may become due or makes a general assignment, arrangement or composition with or for the benefit of its creditors or has a winding-up order made against it or enters into liquidation, whether voluntarily or compulsorily, or seeks or becomes subject to the appointment of an administrator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets, or is affected by any event or similar act or which under the applicable law of the jurisdiction where it is constituted has an analogous effect or takes any action in furtherance of any of the foregoing acts (other than for the purpose of a consolidation, reconstruction or amalgamation previously approved in writing by the other Parties), the other

Party may give notice in writing of its immediate withdrawal from this Agreement.

9.4 Furthermore, a Party may terminate this Agreement with immediate effect if another Party:

- (a) repeatedly fails to comply with Article 15 (Compliance with Laws) or commits a violation after notice of its failure to comply with Article 15 from another Party; or
- (b) commits a material breach of this Agreement where such breach has not been remedied to the reasonable satisfaction of such non-defaulting Party within a reasonable period of time, after receipt by the defaulting Party of written notice from such non-defaulting Party requiring such remedy; or
- (c) fails to pay any amount when it becomes due and payable under the terms of this Agreement, where such failure has not been remedied within 10 working days of receipt by the defaulting Party of written notice from such non-defaulting Party requiring such remedy.

9.5 Notwithstanding the termination of this Agreement in accordance with this Article 9, a non-defaulting Party retains its right to claim against a defaulting Party for any loss caused by or arising out of such termination.

Upon the termination of this Agreement for whatever cause:

- (a) a final calculation shall be carried out of the amount due (if any) under this Agreement and any amount due to be paid within 30 days of the date of termination if not otherwise due for payment at an earlier time;
- (b) the carriage of cargoes already lifted shall be completed by the Vessel Provider by due delivery at the port of discharge; and
- (c) the Parties shall continue to be liable to one another in respect of all liabilities and obligations accrued prior to termination.

9.6 In the event of a termination pursuant to Article 9.3 or 9.4, the Parties shall give prompt written notice to the Federal Maritime Commission.

**ARTICLE 10. APPLICABLE LAW**

This Agreement, and any matter or dispute arising out of or relating to this Agreement, shall be governed by and construed in accordance with the laws of England; provided, however, that nothing herein shall relieve the Parties of obligations to comply with the Shipping Act of 1984.

**ARTICLE 11. NOTICES**

All notices and other communications pertaining to this Agreement shall be given in writing addressed to the respective Parties, as follows:

If to HLAG:

Hapag Lloyd AG  
Ballindam 25  
20095 Hamburg, Germany  
Email: Axel.Luedeke@hlag.com  
Attention: Axel Luedeke, Senior Director Network and Cooperations

If to Maersk:

Maersk Line A/S  
50, Esplanaden  
DK-1098 Copenhagen K, Denmark  
Email: Anders.Boenaes@maersk.com  
Attention: Anders Boenaes

**ARTICLE 12. LANGUAGE**

This Agreement and all notices, communications or other writings made in connection herewith, shall be in the English language. No Party shall have any obligation to translate such matter into any other language and the wording and the meaning of any such matters in the English language shall govern and control.

**ARTICLE 13. ARBITRATION**

13.1 All disputes or differences arising out of or in connection with this Agreement which cannot be amicably resolved shall be referred to arbitration in London in accordance with



the Arbitration Act 1996 or any statutory modification or re-enactment thereof, save to the extent necessary to give effect to the provisions of this Article 13. The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced, unless when the amount in dispute is less than US\$100,000, in which case the LMAA Small Claim Procedure shall apply. The reference shall be to a sole arbitrator agreed upon by the Parties within 21 days of any party seeking an appointment, or, if any Party should so request, a panel of three arbitrators shall be appointed. Should there be no agreement on an arbitrator within 21 days, the LMAA President will appoint a sole arbitrator (or panel of 3 arbitrators) at the request of any Party.

13.2 Notwithstanding the above, the Parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Agreement. In the case of a dispute or difference in respect of which arbitration has been commenced, the following shall apply:-

i. A Party to the reference may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other Party to the reference of a written notice (the "Mediation Notice") calling on the other to agree to mediation.

ii. The other party to the reference shall thereupon within 14 calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the Parties to the reference shall thereafter agree a mediator within a further 14 calendar days, failing which on the application of any party to the reference a mediator will be appointed promptly by the Arbitration Tribunal ("the Tribunal") or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the parties to the reference may agree or, in the event of disagreement, as may be set by the mediator.

iii. If any party to the reference does not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the parties to the reference.

iv. The mediation shall not affect the right of a party to the reference to seek such relief or take such steps as it considers necessary to protect its interest.

v. Each party to the reference may advise the Tribunal that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Tribunal may take the mediation timetable into account when setting the timetable for steps

in the arbitration.

vi. Unless otherwise agreed or specified in the mediation terms, each party to the reference shall bear its own costs incurred in the mediation and the parties to the reference shall share equally the mediator's costs and expenses.

vii. The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable under the law.

#### **ARTICLE 14. NON-ASSIGNMENT**

The Parties agree that no Party hereto shall have the right to assign any of its rights or obligations hereunder to any third-party without the written consent of the other parties hereto.

#### **ARTICLE 15. COMPLIANCE WITH LAWS**

15.1 The Parties shall comply with all applicable laws, rules, regulations, directives and orders issued by any authorities having jurisdiction in relation to this Agreement, including, to the extent applicable, anti-bribery laws and regulations.

15.2 Each Party shall indemnify and hold the other Party harmless against any losses to the extent incurred as a result of any breach by the indemnifying Party of applicable economic sanctions laws and regulations including, without limitation, where these are incorporated within United Nations resolutions, European Union regulations, Swiss ordinances and extraterritorial US federal and state laws and regulations (the “**Sanctions Laws**”).

15.3 Each Party warrants that neither it nor any of its affiliates, directors, officers, employees or agents is not identified on the U.S. Treasury Department’s list of specially Designated Nationals and Blocked Persons (the SDN List), or the Swiss, European Union or other sanctions lists. The SDN list can be accessed via following link:  
<http://www.treas.gov/offices/enforcement/ofac/sdn/index.shtml>.

15.4 The Vessel Provider covenants that none of its vessels is identified or otherwise targeted, or owned and/or operated, by any person identified or otherwise targeted by the Sanctions Laws. Each Party covenants that no interest in its cargo and/or containers carried on any Vessel is identified or otherwise targeted by the Sanctions Laws.

**SIGNATURES**

This Agreement may be executed and delivered by exchange of facsimile copies showing the signatures of each Party, and the original signatures need not be affixed to the same copy. The facsimile copies showing the signature of each Party will constitute original signed copies of the same Agreement requiring no further execution.

IN WITNESS WHEREOF, the Parties have this \_\_\_\_ day of April, 2019 caused this Agreement to be executed by their duly authorized representatives:

HAPAG-LLOYD AG

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

MAERSK LINE A/S

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



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IN WITNESS WHEREOF, the Parties have this 31<sup>ST</sup> day of May 2019 caused this Agreement to be executed by their duly authorized representatives:

HAPAG-LLOYD Aktiengesellschaft

By: 

Name: Ulf Schawohl  
Title: Senior Managing Director

By: 

Name: Axel Luedeke  
Title: Senior Director

MAERSK LINE A/S

By: \_\_\_\_\_

Name:  
Title:

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Classification: Public

Maersk/HL Central American Vessel  
Sharing Agreement  
FMC AGREEMENT NO. 203-011463-014  
(9th Edition)  
ORIGINAL PAGE NO. 14

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IN WITNESS WHEREOF, the Parties have this 31<sup>st</sup> day of May 2019 caused this Agreement to be executed by their duly authorized representatives:

HAPAG-LLOYD Aktiengesellschaft

By: \_\_\_\_\_

Name:  
Title:

By: \_\_\_\_\_

Name:  
Title

MAERSK LINE A/S

By: Anders Boenke

Name: Anders Boenke  
Title: SVP

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